

### **REMARKS**

In the Final Office Action dated July 8, 2010, the Examiner objects claim 8 under 37 C.F.R. § 1.75(c), rejects claims 1-11, 13-16, 25 and 30 under 35 U.S.C. § 112 second paragraph, and rejects claims 17-18 and 20-22 under 35 U.S.C. § 103(a) as being unpatentable over Collito in view of Knoll. With this Amendment, Applicant has amended claims 1, 2, 6, 7, 12, 15, 23, 24, 25, and 30. After entry of this Amendment, claims 1, 2, 4-7, 9-18, 21-30, 31 and 32 remain pending in the Application. Claims 3, 8, 19, 20 and 31 are cancelled. Reconsideration of the Application as amended is respectfully requested.

#### **Submission under 37 C.F.R. § 1.116**

The Amendment is submitted under the provisions of 35 U.S.C. 1.116. Entry of this amendment is sought under these provisions. Specifically this amendment seeks to place the claims that remain in the application in condition suitable for allowance. The present amendment presents the first opportunity for the applicant to address the rejections and objections raised in the most recent Office Action. Consideration and entry of this amendment is requested.

Entry of this amendment is also sought for purposes of appeal. It is submitted that this amendment addresses the rejections under 35 USC 112, that have been raised for the first time in this action as well as the rejections under 35 USC 103(a), also first presented in this Office Action. The present amendment cancels claims and removes issues for consideration on Appeal. It does not raise new issues or require additional search in this matter. Entry is therefore respectfully requested.

#### **Objection under 37 C.F.R. § 1.75(c)**

The Examiner objects claim 8 under 37 C.F.R. § 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. His issue has been addressed in the present amendment.

#### **Rejections under 35 U.S.C. § 112**

The Examiner rejects claims 1-11, 13-16, 25 and 30 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1, 2, 6, 7, 12, 15 and 30 have been amended to address and correct the issues raised by the Examiner in this matter. It is submitted that the Applicants' invention as set forth in these claims now particularly points out and distinctly claims the subject matter the Applicant regards as the invention.

**Rejections under 35 U.S.C. §103(a)**

The Examiner rejects claims 17-18 and 20-22 under 35 U.S.C. §103(a) as being unpatentable over Collito (U.S. Patent No. 2,650,801) in view of Knoll (U.S. Patent No. 7,694,717).

The Collito reference is directed to process line with a heat exchange conduit formed of any suitable metal. (Column 2, lines 17 – 20). The Examiner indicates that the conduit in Collito is previously deformed. From this prior deformation which is not specifically cited by the Examiner, one is to infer that the metal conduit is inflatable. The Examiner does not specify how the metal material such as aluminum, copper stainless steel etc., is expandable with the introduction of a temperature control fluid. .

The Knoll reference is cited as disclosing an elongated conduit the comprises a flexible fluid tight wall having an internal channel with a non-circular cross section with the elements enumerated in the Office Action at page 3. The Knoll reference specifies that the hollow shape disclosed therein is made of an aluminum alloy. The reference teaches that the shape of figure 2A can be rolled to produce the flat shape of figure 2B. These reference lacks and teaching or suggestion that the tube is expandable with the introduction of temperature control fluid.

Claim 17 has been amended to include the limitation previously considered by the Examiner in claim 20 in formulating this newly presented rejection. Claim 17 has employed the word “expandable” rather than the word “inflatable” in order to address an as-yet unmade rejection arising from the definition of the term “Inflatable” ; meaning expandable when filled with a gas. The term “expandable” has been adopted to better suit the action of filling with a temperature control fluid. It is submitted that the cited references fail to teach or suggest the use of an elongated conduit that is expandable upon the introduction of a temperature control fluid. Both Collito and Knoll teach metal conduits. Expansion of the tube in Collito would compromise the contact surface negating the Examiner’s position that the tube in Collito is inflatable since it was previously deformed. The deformation created the contact surface central to the disclosure in Collito. Any inflation/expansion to return the Collito tube to its predeformation configuration would destroy the intended purpose of the device disclosed in Collito. Such destruction of the intended function of a device would be beyond acceptable bound for supporting an obviousness rejection. .

Claims 18, 21, and 22 depend from claim 17 to contain all of the limitations found in claim 17. For this reason, it is submitted that the Applicant's invention as set forth in these claims is not taught, anticipated or rendered obvious by the cited references.

The Raiment rejects claims 1, 2, 4-7, 9-16 and 23-30 as being unpatentable over Collito I view of Knoll as applied to claims 17-18 and 21-22. The Examiner indicates that the Collito and Knoll teach all elements except and elongate cover. The Tremont reference is cited for that feature.

In addition to the various amendments made to address and overcome the rejection under section 112, second paragraph, claim 1 as amended now specifies that the at least one flexible elongate temperature control conduit comprises a flexible polymeric material. This limitation was previously found in claim 3. The Collito and Knoll reference fail to teach or suggest a device as set forth in claim 1 in which the temperature control conduit is a polymeric material. Without such a reference, the Examiner has failed to produce a prima facie case of obviousness with regard to claim 3 as previously presented. In the interest of resolution, this limitation has been incorporated in claim 1 by this action.

Claims 2, 4-7, 9-16 depend from claim 1 to contain all of the limitations found therein. By this dependency, it is submitted that the Application's invention as set forth in these claims for the reasons set forth previously.

Claim 23 has been amended to specify that the elongated cover further comprises at least one pocket for holding said temperature control conduit. This element was previously presented in dependant claim 24. Applicant traverse the Examiner's assertion that the pocket as set forth in claim 23 is equivalent to the cavity of the Tremont reference. This assertion is not understood. The term cavity does not appear in the written specification in Tremont. Is the Examiner referring to the cavity defined in the pipe? Alternately is the Examiner referring to the vent means 52 shown in drawing figure 7?

Claim 23 specifies that the "elongated cover has at least one pocket for holding said temperature control conduit"<sup>1</sup>. Thus it is submitted that the Tremont reference lacks any teaching or suggestion of a pocket element that is part of the elongated cover. Thus the Applicant's invention as set forth in claim 23 as amended is not taught, anticipated or rendered obvious by the cited references.

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<sup>1</sup> Claim 24 as originally presented state that the elongated cover "comprises" the pocket. This term was altered in order to eliminate multiple use of the term comprises in the amended claim.

Claims 25, 26, 27, depend from claim 23 to conation all of the limitation found therein. By dependency, the invention as set forth in these claims is not taught, anticipated or rendered obvious for the reasons previously discussed.

Claim 29 stands rejected. The Examiner takes judicial notice of heat transfer sensors. The Examiner has failed to meet the requirements for a prima facie case of obviousness by this judicial reference. Without a reference supporting the Examiner's position, the obviousness rejection remains unsupported. It should also be noted that the invention as set forth in claim 29 is directed to a sensor within the cover configured for detecting the pressure within of temperature control fluid outside the temperature control conduit. Thus the Examiner's assertions in the Office Action are not directed to the invention as claimed.

The rejection of claim 30 is traversed as the cited references, taken alone or in combination, fail to teach or suggest a configuration where a pair of temperature control tubes are held in place by an elongated cover member as disclosed therein. Similarly, the cited reference fail to teach or suggest the configuration of claim 32.

The Office Action fails to discuss claim 33.

If the Examiner feels that prosecution of the present Application can be expedited by way of an Examiner's amendment, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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